33-35, while Group II includes claims 28-30. Therefore, claims 11-22 and 31-32 are not in any group. Paragraph 4 (page 3) of the restriction requirement indicates that claims 11-22 are to be examined "with the claims of Group I," while paragraph 8 (page 5) indicates that claims 31-32 will be examined with the claims of Group II. Applicants respond below under the assumption that claims 11-22 and 31-32 are actually included in Groups I and II, respectively, but respectfully request clarification for the record.

Further clarification also is requested with respect to claims 33-35. According to pages 2 and 3 of the restriction requirement, these claims are included in Group I, and Applicants respond accordingly. However, paragraph 8 (page 5) of the restriction requirement appears to place these claims in group II.

Response to Restriction Requirement

Pursuant to the restriction requirement, applicants are required to elect one of the following groups for prosecution:

Group I (Claims 1-10, 23-27, 33-35 and 11-22): nucleic acids that comprise a polynucleotide that encodes a fusion protein that comprises a) a catalytic domain of a glycosyltransferase, and b) a catalytic domain of an accessory enzyme; expression vectors and host cells that comprise the nucleic acids; and methods of producing a fusion polypeptide

Group II (Claims 28-30 and 31-32): fusion polypeptides that comprise a) a catalytic domain of a glycosyltransferase, and b) a catalytic domain of an accessory enzyme.

Applicants hereby elect **Group I**, which is understood to encompass claims 1-27 and 33-35.

This election is made **with traverse**. According to 35 U.S.C. § 121, "[i]f two or more independent and distinct inventions are claimed in one application, the Commissioner *may* require the application to be restricted to one of the inventions" (emphasis added). Similarly, MPEP § 806.05, states that if two are more inventions are distinct, "restriction *may* be proper" (emphasis added). Therefore, these provisions indicate that, in some instances, restriction may not be proper where two distinct inventions are claimed in an application.

The standard for determining when restriction is proper is set forth in MPEP § 803. According to this section,

> "[i]f the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, *even though it includes claims to distinct or independent inventions*." (emphasis added).

Thus, the MPEP explicitly requires the Examiner to examine the claims if no serious burden exists.

In the instant case, Applicant respectfully submits that examining claims of Group II (polypeptides) in addition to those of Group I would not create a serious burden. It is extremely unlikely that the search would identify references that describe the nucleic acids of Group I (if such references existed) and do not also describe the proteins encoded by the nucleic acids, and vice versa. Therefore, searching both species would not be burdensome for the Examiner.

Species Election

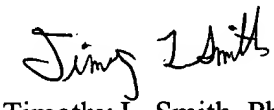
With the election of Group I, Applicants are also required to elect: a) one species of glycosyltransferase, and b) one accessory enzyme from among those listed in claim 9. Applicants hereby elect **sialyltransferase** as the glycosyltransferase and **CMP-sialic acid synthetase** as the accessory enzyme.

CONCLUSION

In view of the foregoing, Applicants believe that all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned attorney at (415) 576-0200.

Respectfully submitted,



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